

# **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**

## **INITIAL STATEMENT OF REASONS**

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6, ARTICLE 3, AMEND  
SECTION 1160.2, AND ADOPT SECTIONS 1160.7 AND 1161.8

### **GENERAL HAZARDOUS MATERIALS REGULATIONS (CHP-R-15-06)**

#### **PURPOSE OF REGULATORY ACTION**

Section 2402 of the California Vehicle Code (CVC) authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Sections 2402.7 and 34501(b) CVC authorize the CHP to adopt reasonable rules and regulations for the safe transportation of hazardous materials (HM) in order to ensure the safety of persons and property using the highways. The adopted regulations are contained in Title 13, California Code of Regulations (CCR).

In compliance with the requirements of Title 49, United States Code (USC), Chapter 51, Section 5125, and Title 49, Code of Federal Regulations (CFR), Part 107, Subpart C, the CHP proposes to amend and update the state's hazardous materials regulations (HMR) applicable to persons subject to federal jurisdiction pursuant to Title 49, CFR, Part 171 to be consistent with national transportation requirements as required by federal law.

This rulemaking action adopts the most recent edition of the federal HMR incorporated by reference. In order to further align the state and federal regulations, this action proposes to adopt two sections to include the federal requirements for HM registration and safety and security plans. The intent of this rulemaking action is to fulfill federal requirements and consider the competitiveness of California businesses by eliminating or modifying, to the extent possible, regulations which represent a negative impact on businesses and the economy.

#### **SECTION BY SECTION OVERVIEW**

##### **Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1160.2, U.S. Department of Transportation Regulations**

The state's HMR contained in Title 13, CCR, Sections 1160 through 1167, are required to be continuously evaluated and updated to avoid federal preemption. Title 49, USC, Chapter 51, Section 5125, requires states to adopt HM laws and regulations which are "*substantively the same as*" the corresponding federal HM laws and regulations. In order for the CHP to fulfill the mandate established in Section 34501(b) CVC, and be in compliance with federal law, the state must align its HMR applicable to persons subject to federal jurisdiction pursuant to Title 49,

CFR, Part 171. This alignment will reflect the change from the October 1, 2013, printed edition of the federal HMR to the October 1, 2014, printed edition of the federal HMR.

**Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1160.7, Hazardous Materials Registration**

The state's HMR, contained in Title 13, CCR, are required to be continuously evaluated and updated to avoid federal preemption. Title 49, USC, Chapter 51, Section 5125, requires states to adopt HM laws and regulations which are "*substantively the same as*" the corresponding federal HM laws and regulations. The proposed adoption of this section will meet the federal requirements applicable to HM registration.

**Title 13, California Code of Regulations, Division 2, Chapter 6, Article 3, Section 1161.8, Safety and Security Plans**

As previously explained, the proposed adoption of this section will meet the federal requirements applicable to safety and security plans.

**STUDIES/RELATED FACTS**

None.

**LOCAL MANDATE**

These regulations do not impose any new mandate on local agencies or school districts.

**IMPACT ON SMALL BUSINESS**

The CHP has not identified any significant adverse impact on businesses since these changes will only affect carriers and shippers which are currently subject to federal jurisdiction. As a result, the affected persons should already be in compliance with the appropriate federal regulations.

**ALTERNATIVES**

The CHP has not identified any alternative, including the no action alternative, that would be more effective and less burdensome for the purpose for which this action is proposed. Additionally, the CHP has not identified any alternative which would be as effective and less burdensome to affected persons other than the action being proposed.

**Alternatives Identified and Reviewed**

1. Amend the existing regulations for consistency with the federal regulations.

2. Change statutes to directly require compliance with the federal regulations as these regulations now exist or are hereafter amended, in lieu of the existing delegation of rulemaking prescribed in Section 34501(b) CVC. This alternative would eliminate the present state regulatory mechanism which provides for the adoption of exceptions to the HMR presently adopted by reference in Title 13, CCR. The CHP also retains discretion to promulgate regulations and/or exceptions for carriers not subject to federal jurisdiction (e.g., noncommercial or governmental operations).
3. Make no changes to the existing regulations. This could result in federal preemption of California's HM regulations. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce, thus jeopardizing public safety and environmental protection. Failure to maintain consistency with the federal regulations would also jeopardize federal Motor Carrier Safety Assistance Program grants used for commercial vehicle enforcement and training. The loss of all or a portion of this funding would in itself represent a negative impact on public safety.

## **ECONOMIC IMPACT ANALYSIS**

### **Economic Impact on Business**

The CHP has not identified any significant adverse impact on businesses. Businesses subject to federal jurisdiction are currently required to comply fully with the federal HMR, and therefore, the mere adoption of regulations to avoid preemption or to grant enforcement authority of preexisting regulations provides no additional impact on industry. The proposed changes to HM regulations in Title 13, CCR, Section 1160.2 and the addition of Sections 1160.7 and 1161.8, are already applicable and enforceable on businesses subject to federal jurisdiction, pursuant to Title 49, CFR, Section 171.1. Businesses involved in the transportation of HM may choose to purchase the current Title 49, CFR, Volume 2, Subtitle B - Chapter I, October 1, 2014, Edition at a cost of approximately \$40 annually through various vendors. The regulations are also available at no cost online at:

<http://www.gpo.gov/fdsys/pkg/CFR-2014-title49-vol2/pdf/CFR-2014-title49-vol2-subtitleB-chapI.pdf>

These businesses will not otherwise experience any greater effect due to the implementation of the referenced sections of Title 49, CFR, Volume 2, Subtitle B - Chapter I, October 1, 2014, Edition, other than what is already commonly known and accepted.

### **Creation/Elimination of Jobs or Creation/Elimination or Expansion of Existing Businesses in the State of California**

The CHP has made an initial determination that this proposed regulatory action will neither create or eliminate jobs in the state of California, nor result in the elimination of existing businesses, nor create or expand businesses in the state of California. Additionally, this proposed regulatory action will not have a significant statewide adverse economic impact

directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Benefits of the Regulation**

This proposed regulatory action will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and safety to the environment because changes to the application of the regulation are not substantive and bring the regulation in conformance with existing statute. Minor additions and changes to the regulations are clarifying in nature and all are within existing requirements for industry.

The CHP has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will impose no new mandate upon local agencies or school districts; (3) will involve no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Sections 17500-17630 of the Government Code require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create or eliminate jobs in the state of California, nor result in the elimination of existing businesses, nor create or expand businesses in the state of California; (5) will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states; (6) will continue to provide a nonmonetary benefit to the protection and safety of public health and employees; and (7) will provide safety to the environment by providing an updated regulatory authority for enforcement efforts.

### **FISCAL IMPACT TO THE STATE**

The Department has determined these regulation amendments will result in:

- No significant increase in costs for carriers or shippers involved in the transportation of HM in commerce. This rulemaking action will simply provide a regulatory basis to provide consistency between the state's HMR and the federal HMR, which are already being used by the CHP and throughout North America;
- No significant compliance cost for persons or businesses directly affected;
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public;
- No impact on the level of employment in the state; and
- No impact on the competitiveness of this state to retain businesses, as state, provincial, and national governments throughout North America have already adopted these requirements.